



TOWN OF GREENWICH

Town Hall, 101 Field Point Road, Greenwich CT 06830

Board of Ethics

Peter Tesei, 1st Selectman, Ex Officio Member
Paul A. deBary, Chairman
Rev. Ian Jeremiah, Secretary
Robert V. Sisca, Member
Robert F. Grele, Member
John Margenot, Member

Annual Report of the Board of Ethics

Fiscal Year 2016-2017

The Board of Ethics is pleased to submit the following report of its activities for the fiscal year ending June 30, 2017. This report is required to be submitted to the Board of Selectmen and the Representative Town Meeting pursuant to Section 2.12 (c) of the Greenwich Code of Ethics.

Executive Summary

There were two requests for advisory opinions and two complaints filed with the Board of Ethics during the 2016-2017 Fiscal Year. Both requests for advisory opinions involved the Commission on Aging. The Board rendered a decision on the first request, but had not rendered a decision with respect to the second by the end of the Fiscal Year. One of the complaints was dismissed after a preliminary investigation. The second complaint involved two Town Officers. One was found to have violated the Code of Ethics. The other was found not to have violated the Code.

Five Town Officers filed financial disclosure forms covering the 2016-2017 Fiscal Year. This level is lower than last year, and significantly lower than the number of filings for prior fiscal years. During the past few years, there has been as a significant improvement in the accuracy and completeness of the reports that are filed, as well as a significant decrease in unnecessary filings, but the Board continues to be concerned that the Town's current ethics reporting system is not well understood by many Town Officers and that some may simply consider it too burdensome to comply with. During the Board's investigation of complaints this year, it was uniformly advised by respondents that they had received no training with respect to the requirements of the Code of Ethics. The respondents also evidenced significant misunderstandings of, and confusion about, the Code's requirements.

Last year, after meeting with the 1st Selectman, the Town Attorney and the Director of the Department of Human Resources, the Board approved a draft of proposed technical amendments to the Code of Ethics to permit the Board to establish an on-line

filing system. This draft was submitted to the 1st Selectman for consideration. To date we have not been advised as to further attention to this matter.

The Board has benefited from the continuation of budgeted funds to support its operations. This year, the Board was pleased to receive an additional allocation of funds to cover any professional assistance that might be necessary in connection with the preliminary investigation of a complaint, should the need arise. Although the Board did not require the use of such funds to deal with the complaints it received this year, the existence of this budget allocation serves as an important statement that the work of the Board will be supported as necessary. The Board believes that an increase in this budget allocation would provide further evidence to Town Officers and the public at large that the Board has the necessary means at its disposal to properly address any serious complaint it might receive.

Complaints of Violations of the Code

There were two complaints filed with the Board of Ethics during the 2016-2017 Fiscal Year. Both were anonymous. One of the complaints was dismissed after a preliminary investigation. The Board determined that the allegations contained in the complaint, taken at face value, failed to describe a specific violation of the Code of Ethics. Since the complaint was anonymous, the Board wasn't able to obtain any additional information from the complainant.

The second anonymous complaint involved two Town Officers. It alleged that a Town department head had received a valuable gift from a member of the RTM in exchange for discharging a fine assessed against the RTM member. After a thorough preliminary investigation, the Board determined that there was probable cause to believe that a violation of the Code had occurred in the case of both Town Officers and determined that a public hearing of the matter was appropriate.

At the public hearing, both Town Officers agreed to the Board's statement of facts and recommendations concerning the incident as it related to them. The Board then rendered its decision in each case. The RTM member was found to have violated the Code by attempting to influence a Town action in which there was a personal financial interest. The department head was found not to have violated the Code, although the Board found longstanding deficiencies in departmental procedures and practices that the department head agreed to address. Copies of the decisions are attached to this report.

The Board has adopted a Statement of Procedures that describes the process by which complaints should be submitted to the Board. Because individuals are often unclear about, or omit, essential facts, the Statement of Procedures recommends that complainants identify themselves. This makes it easier for the Board to obtain the information that may be necessary in order to determine whether a preliminary investigation of the matter dealt with in the complaint should be commenced. The Code of Ethics doesn't require complainants to identify themselves or complaints to be submitted in any particular form, however. As a result, the Board considers it best to review informal and anonymous submissions carefully and make a determination whether or not, in appropriate circumstances, certain requirements of its Statement of Procedures should be waived in the interest of better serving the purposes of the Code.

At times, individual members of the Board receive informal communications that do not follow the procedures the Board has established for making a complaint under the Code. When these are received, it is our practice to respond to the sender (if known), refer them to the provisions of the Code that might apply to the subject matter and describe the procedures for filing a formal complaint, should it prove appropriate. Where non-conforming communications are addressed to the Board as a whole, the Board has made a practice of conducting a formal review. The purpose of this review is to determine whether the communication contains information that could serve as the basis for a complaint, even though the communication isn't expressly identified as such. If the Board finds no basis for believing that a violation of the Code may have occurred after carefully considering at face value any allegations made in such a submission, it makes a determination that the requirements of its Statement of Procedures should not be waived and the submission should not be treated as a complaint. Alternatively, if it finds the allegations to contain on their face all the elements of a violation of the Code, the Board will commence a preliminary investigation to determine if there is probable cause to believe that a violation has in fact actually occurred notwithstanding anomalies in the method by which the complaint has been submitted.

As described elsewhere in this report, the Board has been active in efforts to increase awareness of both the requirements of the Code and the procedures for filing complaints. Due to the high level of cooperation and support that the Board has experienced in connection with these efforts, we are inclined to believe that the low incidence of complaints is indicative of a high level of ethical behavior in Town government.

Requests for Advisory Opinions

The Board of Ethics received two advisory opinion requests during the 2016-2017 Fiscal Year. Both requests were made by members of the Commission on Aging. One asked for guidance concerning the submission of a proposal to the Town. The proposal, involving a prospective partnership with Nathaniel Witherell, was to be made by a company owned by the commission member submitting the request. A copy of this opinion is attached to this report.

The second request dealt with broader issues concerning the activities of the Commission, particularly in its efforts to participate in the World Health Organization's Age Friendly Cities and Communities Program. The Board expects to render more than one opinion in response to this request in the 2017-2018 Fiscal Year.

As in prior years, members of the Board individually and the Board as a whole also provided informal guidance to various Town Officers who requested such assistance either at meetings of the Board or on an ex-parte basis.

Annual Disclosure Statements

Review of Filings. As of July 30, 2017, five Town Officers filed eight annual disclosure reports with the Town Clerk covering the 2016-2017 Fiscal Year. The following chart summarizes the results of a review of these disclosure forms:

	RTM	Town Employees	Appointees	Total
Fully Compliant	2	0	3	5
Not Compliant	<u>0</u>	<u>1</u>	<u>0</u>	<u>1</u>
Total	3	1	1	6*

* Five individuals reported, one of whom was both an RTM member and an appointee.

There has been a significant decline in the number of reporting persons during the last few years due to the elimination of unnecessary filings (i.e. those in which the filer indicated that he or she had no interest to declare). The Board has also noted improvements in the filings that are being made. While there have been a significant number of non-notarized filings in prior years, all the forms filed this year were notarized. Of the eight forms filed with the Town Clerk (including two each by two persons), seven were fully compliant with the Code, while the other was non-compliant only because the transaction that was reported on was not a Town transaction.¹

In the last few years, the Board has made efforts to inform Town Officers about the annual disclosure filing. This has included improving the content of information about the filing requirement available on the Town website and redesigning the instructions for filling in the form. The high level of compliant filings this year indicates that these efforts have had an effect. However, the miniscule number of filers suggests that there is still much work to be done in order to achieve the robust reporting system that the Code contemplates. The very low number of forms filed, particularly for this year, suggests that additional training is necessary to ensure that all Town Officers are aware when they have an obligation to file.

The sharp reduction in unnecessary filings recently has highlighted the extremely low percentage of Town Officers who file disclosure statements. Considering the possible causes for this low percentage raises the issue as to whether the current system is so antiquated that it encourages non-compliance. While the Board sees continued room for improvements in reporting under the current system, it feels that the level of reporting would significantly increase if the mechanics of the reporting system were enhanced and brought up to date. In particular, an on-line filing system would reduce the amount of

¹ This report concerned a gift that was received and reported to be of no value. The Code does not require the disclosure of gifts of no value. It prohibits gifts of more than nominal value and consequently does not expect Town Officers to be reporting them.

time required for Town officers to file and allow for prompts and other interactive features that could provide guidance, help eliminate inadvertent mistakes and give filers the tools they need to properly determine whether they have an interest in a transaction that should be disclosed.

The Importance of Disclosure. The Town's Code of Ethics has served it well over the past half century. Wisely, the framers of the Code did not take a bureaucratic approach that involved a myriad of specific prohibitions or provide for an extensive full time enforcement apparatus. In their report recommending the adoption of the Code by the RTM, they noted that ethical standards need to be flexible, since circumstances and public attitudes change over time. Consequently, they articulated a set of broad principles and relied on the Board of Ethics to articulate their proper application in specific circumstances in response to specific complaints or requests for advisory opinions.

Over the ensuing decades, public expectations, as well as federal and State requirements, for local governments have indeed changed, and the size and functions of Town government have changed with them. A remarkable development for Greenwich has been an increasing reliance on numerous unpaid volunteers, many of whom are highly skilled professionals intimately involved in the areas they are assisting the Town with. Equally remarkable has been the ability of the Code of Ethics to accommodate these developments.

Public disclosure has been lynchpin of the ethics compliance system established under the Code of Ethics. One reason the system has been so adaptable to change is that it relies on common sense: both the common sense of Town Officers to avoid the appearance of influencing matters in which they have a unique personal financial interest and the common sense of the public to appreciate that interests that are openly disclosed are not likely to be problematic. But all of this depends on the maintenance of a robust disclosure system.

Mechanics of the Disclosure System. The mechanical aspect of the disclosure system contemplated by the Code is one thing that has not been flexible enough to adapt to changes over time. Since the Code was drafted, we have seen dramatic changes in information processing technology and electronic media. In the age of digital communications, most Town residents are accustomed to exchanging information, and even engaging in important transactions, electronically and instantaneously, often by hand held devices.

The requirement to have disclosure statements notarized was perhaps itself a rare instance of overkill by the drafters of the Code. The mere fact of making a disclosure is what establishes compliance with a disclosure based system. If the disclosure is absent or inaccurate, the requirement has not been met. Notarizing the filing, or to swearing to it under oath, does not make it any more efficacious.

Another feature of the current paper filing system is that Town Officers are required to file a report only if they have a financial interest to disclose. If the Code required all Town Officers to file a report *whether or not* they have something to disclose, the Town Clerk would be buried by a blizzard of paper that contains no significant information. However, by using an exceptions reporting system, the Town cannot be sure that all Town Officers are aware of the requirement to report. There is

simply no way to know whether a failure to file is due to 1) the absence of a financial interest to disclose, 2) a deliberate decision not to comply with the Code or 3) ignorance of or forgetfulness about the reporting requirements.

As a result, a review of the statements that are filed doesn't allow the Board to judge with any certainty the degree of overall compliance with the Town's financial disclosure requirements. Clearly, however, with several thousand Town employees and elected and appointed officials covered by the requirements of the Code, it seems likely that more than five will have a financial interest in a Town transaction during a fiscal year. The Board is aware, for example, of several situations where the Town employs more than one member of a family and no disclosure report has been filed.² In light of the evident failure to make such obvious disclosures, one must question whether other less evident interests might also not have been reported on and what the reasons for such failure might be. In particular, the Board has questioned for several years whether the reporting system itself may be part of the problem and a more user-friendly reporting system might result in improved reporting.

It is likely that the current system seems unduly burdensome to many Town Officers, particularly if they are accustomed to using on-line systems to file other reports or engage in similar transactions. In addition to the requirement that disclosure statements be notarized, reports are currently only permitted to be filed at the end of the year—up to thirteen months after the transaction being reported on may have occurred.³ These requirements may serve as significant disincentives for reporting, especially when the individual may not have convenient access to a notary or the information needed to complete the form may not be readily available at the time he or she is required to make the filing. When the interest being reported (or the likelihood that nondisclosure will be noticed) seems small, some may consider that they will be better off not filing a statement rather than take the risk that they will be held responsible for making an inaccurate statement under oath.

Misconceptions about the Disclosure Requirement. As mentioned above, the Board is aware that a number of Town Officers continue not to make reports concerning the Town's employment of members of their family. In some cases, this is despite efforts to encourage them to either file a report or request an advisory opinion to clarify their specific situation. If the Board receives a complaint with respect to someone's failure to report on the employment of a family member, it can, where circumstances warrant, conclude that the violation has been the result of honest confusion or inadvertence. Obviously, it would be difficult for the Board to reach such a conclusion when the availability of an advisory opinion seems to have been deliberately ignored.

² In its advisory opinions, the Board has consistently indicated for many years that the Code requires Town Officers to file a disclosure statement showing their interest in another family member's employment by the Town. For many years, nearly half of the limited number of reports that have been filed to report interests involve employment of other family members by the Town.

³ Town Officers are thus required to keep track of all financial interests that they may have in Town transactions throughout the fiscal year in order to report on them after the close of the fiscal year, which can require record keeping and reporting on transactions that are over a year old at the time the filing is made.

Some Town Officers appear to believe that the disclosure requirement is intended as means of discouraging *impermissible* interests. They therefore assume incorrectly that they are not required to report their *permissible* interests. This is a serious misconception. In fact, the Code does not assume that people will report their *impermissible* interests. Nor does it assume they will be dissuaded from having impermissible interests by the threat of prosecution for failing to report them. Rather, it assumes that public confidence is improved when *permissible* financial interests are disclosed and requires disclosure of these interests as the best way to reassure the public that they do not influence Town decisions with respect to various transactions. It assumes that people who are willing to disclose their interest in a transaction will also be willing to avoid involving themselves in the transaction. As a result of these misconceptions, the Board is concerned that the overall low level of filings is an indication that the Town's ethics reporting system is not serving its intended purpose.

Recommended Changes. During the 2015-2016 Fiscal Year, the Board met with the First Selectman, the Town Attorney and the Director of the Department of Human Resources to discuss the possibility that the ethics reporting system could be updated and improved. During these meetings, we discussed the possibility of amending the Code of Ethics to provide for an on-line system of reporting that would allow for filings when an interest arises, rather than at the end of the fiscal year, and eliminate the burdensome and unnecessary requirement that filings be notarized.

The Board feels that the adoption of an on-line disclosure system that does not involve notarized statements will improve, rather than degrade, the efficacy of the Town's ethics disclosures and that a system of reporting that provides for disclosure at the time that a Town Officer becomes aware that he or she has an interest in a Town transaction, rather than retroactively at year end, will be a more efficacious system for all concerned. We believe that this convenient, real-time system would be both easier for Town Officers to comply with and provide more timely and useful information to the public.

As a result, at the request of the 1st Selectman, the Board prepared and approved a draft of a proposed technical amendment to permit such a system to be established as an alternative to the current system for those who choose to use it. This was provided to the 1st Selectman in April, 2016, but the Board has not yet been informed of the results of its consideration.

Plans and Recommendations

Continuing Initiatives. During the 2017-2018 Fiscal Year, the Board will continue to be available to provide information about the requirements of the Code as requested by Town Officers and the community at large. As in the past, members of the Board also stand ready to provide training to assist Town Officers in better understanding the who, why, what, where and when of the disclosure process as well as the ways in which the provisions of the Code affect them generally.

The Board also expects to work closely with the Commission on Aging to respond to the issues raise in an advisory opinion that has been requested by Chair and

Vice-Chair on behalf of the Commission. We believe that guidance on the issues raised in the request will be useful for other Town departments, boards and commissions.

Recommendations. Following a review of its activities and experiences in the 2016-2017 Fiscal Year, the Board wishes to make the following recommendations to the Board of Selectmen and the RTM:

1. Adopt Technical Amendments to the Code of Ethics to Modernize the Town's Financial Disclosure Reporting System. As discussed above, the Board believes that requiring disclosure of financial interest is an essential aspect of the Town's ethics policy, but that the current system is outdated and difficult to comply with. However, a change from an annual paper-based reporting system to a contemporaneous on-line reporting system or decision to drop the requirement that statements must be filed under oath, would require a technical amendment to the Code of Ethics. The Board has proposed a draft of such technical amendments and would be happy to assist the Selectmen and the RTM with the process of reviewing and implementing such technical amendments.

2. Continue Training Efforts. Training is a vital component of any ethics program. The Board encourages the Department of Human Resources to continue its efforts to ensure that the requirements of the Code of Ethics and the Town-wide Ethics Policy are fully understood by all Town employees. In addition, the Board encourages the Town to provide training for elected and appointed Town officers with respect to the requirements of the Code of Ethics in general, and in particular as to reporting requirements. Members of the Board are available to meet with groups of elected and appointed officials who would like to receive additional information concerning the annual disclosure requirement or provide whatever other assistance may be appropriate.

3. Increase the Board's Budget for Investigative Expenses. The Code of Ethics requires the Board to investigate any complaint it receives, but until last year there were no funds budgeted to cover any expenses that might be incurred in conducting such investigations. Under the Board's procedures, and as provided by state law, the Board is required to conduct its preliminary investigation (to determine whether there are grounds for a further investigation) on a confidential basis. Unless the Board has an allocation of funds that are reasonable to cover possible expenses of a preliminary investigation, it faces a Hobson's choice of either compromising the quality, or compromising the confidentiality, of the investigation by requesting additional funds to pursue it. The Board was pleased to have received an allocation of funds for this purpose in the 2016-2017 budget. These funds proved to be unnecessary and were not be used. However, the amount allocated was less than the amount that the Board considers advisable to ensure that it can conduct a proper preliminary investigation should the need arise. Therefore, it requests a larger set-aside of funds for this purpose in the coming fiscal year.

The Board invites comments from Town Officers or members of the general public on both its activities and plans and recommendations. Interested persons may

request to address the Board at any of its public meetings or speak to any member of the Board personally by calling (888) 432 2777.

December 5, 2017

Decision No. 17-01

Date: 5/25/2017

Topics: Department of Parking Services, Fines, Gifts, Influencing Performance or Non-Performance; Performance of Official Duties, Town Employees, Supervisors

Code Sections: Section 3

From an email address identifying itself as “greenwichresident”, the Board of Ethics received a message stating that the sender was making a “formal complaint”. It was alleged in the message that a “valuable gift” had been given to the Director (the “Director”) of the Department of Parking Services (the Department) “for voiding one or more parking tickets.” The message named a member of the Representative Town Meeting (the “RTM Member”) as the person giving the gift, gave the approximate dates that the parking ticket was tendered to the Director and the gift was given, and identified the gift as a set of chairs. The message also attached images (which were apparently taken by the Department’s security cameras or by a Departmental employee) of the RTM Member carrying an antique chair into the Director’s office and of what appeared to be a similar chair in the office.

DUE PROCESS CONCERNS

Counsel for the Director has raised an objection to the Board’s consideration of an anonymous complaint on the grounds that the Director may be denied the due process right to confront an accuser. Although it may be appropriate to raise this concern as early as possible, due process rights in a civil proceeding are different from those accorded under the 6th Amendment in criminal cases. A 6th Amendment style application of the concept to the Board’s review of a complaint would misconstrue the role of the Board and treat complaints as if they were formal charges of the type made in a criminal case after an investigation has been completed.

The Greenwich Code of Ethics (the “Code”) does not require complaints to be made by an identified complainant. This is evident not only in the fact that it provides no formal requirements for a complaint (even a provision that the request be in writing, which it does require for advisory opinions), but also because it does not require a complaint to be made by a citizen of the Town or any other identified type of individual. At the same time, the Code charges the Board with the responsibility to *investigate* complaints; it is not permitted to simply adjudicate the

merits of a charge brought by a third party. Thus, it is the Board's clear duty to investigate any serious allegation of a breach of the Code, regardless of the form in which the complaint is received or whether it can identify the source of the allegation.

It is also important to note that the Board's jurisdiction is limited to actions by Town Officers. The Code has no application to persons who are not employees or elected or appointed officials of the Town.¹ In this sense, the Board's operations are clearly part of the internal administration of the Town, even though they are directed toward assuring that Town government enjoys public confidence and trust.

The Board is sensitive to the possibility of unnecessary reputational harm that can be caused by a public investigation of unfounded complaints. Accordingly, it has adopted procedures that call for all putative complaints to be reviewed carefully by the Board. In addition, these procedures require the Board to undertake, before commencing public hearings or releasing any information concerning a complaint, a confidential preliminary investigation to ensure that there is probable cause to believe that a violation of the Code may have occurred.

The Board's procedures protect a respondent from being publicly exposed to wholly unsubstantiated allegations by an anonymous accuser. The Board evaluates the credibility of every complaint by developing corroborative evidence. In appropriate circumstances, the Board may also solicit information from the respondent in order to better evaluate that evidence and ensure that it has properly considered any mitigating or exculpatory circumstances. It is only after a determination of probable cause that the Board commences public hearings with respect to a complaint. In those hearings, the Board's procedures provide the respondent with a full opportunity to confront the evidence that supports the Board's determination of probable cause.

The Board is also sensitive to the due process rights Town employees have in connection with their employment status. Section 6 of the Code provides that a determination by the Board that the Code has been violated will, upon recommendation by the Board, "constitute good and sufficient cause for proceedings for [a Town Officer's] removal from office." It is important to note, however, that the Board itself is not given the authority to discharge Town employees or remove elected or appointed officials from office. This is reserved for the proper authorities after full consideration of the Board's determination and all other relevant factors. Thus, an investigation by the Board should properly be seen as only a preliminary step in any proceeding affecting a respondent's right to work.

¹ The provisions of the Code are incorporated into many Town contracts, but these would normally be enforced by the Town in Superior Court, not by the Board of Ethics.

In *Morrissey v. Brewer*, 408 U.S. 471 (1972), the United States Supreme Court has indicated that the nature of the (4th Amendment) due process right of confrontation depends on the stage of the proceedings. Courts have also recognized that the degree to which due process rights apply to administrative proceedings depends on nature of the proceedings. Thus, in an administrative proceeding where a governmental body, such as the Board, is charged with responsibility for evaluating reports by whistleblowers, courts have recognized that the right to confront an accuser does not prevent the governmental body from taking appropriate steps to protect the accuser from fear of reprisals.² Accordingly, the Board has determined that the due process rights of the respondent in this case, including any right of confrontation, were properly respected.

THESE PROCEEDINGS: REVIEW OF THE COMPLAINT

Review of the message as a possible complaint was within the jurisdiction of the Board because it concerned Town Officers and Town action. Accordingly, the Board reviewed the message carefully and found that the facts alleged, taken at face value, contained all the elements of a violation of Section 3 of the Code, which prohibits any Town officer from accepting “any valuable gift, thing, favor, loan or promise that might tend to influence the performance or nonperformance of his official duties.” As to the Director, the message alleged that a valuable gift (the chairs) had been given in return for the voiding of a parking ticket, which is an official Town action. It therefore met the threshold requirements of the Code for consideration as a complaint.

To be considered a complaint under the Code, a submission to the Board must allege each of the elements of a violation of the Code. A vague general accusation that a Town Officer has violated the Code is not sufficient. In its Statement of Procedures and Rules of Conduct, the Board has articulated several additional criteria that also must be met. A complaint is required to contain enough detail to allow the Board to determine the specific Town actions or transactions involved and enough information about the circumstances for the Board to be able to conduct a productive inquiry into the matter. In the case of an anonymous submission, this requirement of specificity is particularly relevant since the Board has no ability to contact the complainant to supply additional information. In addition, the Board also considers the appropriateness of conducting an investigation into the matters alleged to ensure that the human and financial costs of conducting the investigation do not significantly outweigh the benefits obtained by the Town.

During an executive session held on December 9th, 2016, after careful consideration of all the above factors, the Board determined that the message it had

² See e.g.: *E.J.S. v. State, Dept. of Health & Social Services*, 754 P.2d 749, 752 (1988), *Ohio Association of Public School Employees, et al. v. Lakewood City School Dist. Bd. of Education.*, 624 N.E.2d 1043, 1047 (1994).

received concerning the activities of the Parking Director, evaluated without regard for the truth or accuracy of the allegations it contained, met the formal requirements for a complaint of a violation or violations of the Code. Accordingly, the Board was required to commence a confidential preliminary investigation to determine if there was probable cause to believe that a full investigation of the matter would result in a finding that one or more violations of the Code had in fact occurred.

Because the complaint was found to involve allegations against two Town Officers, the Board's preliminary investigation necessarily involved both Town Officers. Thus, the Board conducted its preliminary investigation and interviewed the respondents as a part of the same proceeding. Ultimately, however, the Board decided to consider the case of each respondent separately and to render separate decisions with respect to each.³

STATEMENT OF FACTS

During its preliminary investigation, the Board established a number of pertinent facts relative to the allegations in the complaint. Because the complaint was anonymous, care was taken to protect the confidentiality of the respondents and to expand the scope of the investigation only by measured steps as justified by the production of credible and verifiable evidence.

Review of Parking System and Police Records. To begin the preliminary investigation, the Board first obtained independent reports from the Town's parking violations system database to determine if they supported the allegations made in the anonymous complaints. These indicated that the RTM Member had in fact received a ticket on the evening of August 3rd, 2016. The ticket was manually issued by a police officer for parking "not in a legal space" at the Island Beach parking lot at 8:40 PM. System records further indicated that the fine was \$55, that penalties had accumulated in the amount of \$110, and that the entire \$165 had been "conditionally discharged" by the Director for "officer error" on September 14th.

A dispatch report for August 3rd indicated that the police received a call about a van that was being blocked from leaving the Island Beach parking lot and had dispatched a patrol car at about 8:30 P.M. The officer responding to the call issued six notices of violations to illegally parked cars, one of which was to the RTM Member. Later review showed that a fine had been paid in every instance⁴ except

³ Subsequent to the Board's determination that the allegations in the email message should be considered a complaint, the Director engaged the law firm that employs the niece of Mr. Robert Sisca, who is a member of the Board. As a result, Mr. Sisca withdrew from participation in the preliminary investigation of the complaint did not participate in the drafting, discussion, consideration or approval of this decision.

⁴ In two instances the fine was reduced to \$20 and \$50, respectively. In another instance the accumulated penalties for non-payment were reduced from \$110 to \$55.

the violation issued to the RTM Member and that the RTM Member did not have any previous violations listed in the database.

The parking violations database also recorded that a notice had been mailed to the RTM Member on September 14th. The notice was under the name of the Director's predecessor. Moreover, the copy that the Board received did not contain any indication of the disposition of the ticket or explanation of the reason for the notice to be sent. The Director subsequently indicated that the notice was sent out by the vendor that maintained the violations system for the Town and that "the computer didn't populate" the appropriate data to the form, adding that it was "a common problem." The RTM Member didn't recall receiving the notice.

Interview with RTM Member. During an interview with the Board, the RTM Member stated that the notice of violation had been brought to the attention of the Parking Director, but only to question whether it was consistent with Town policy because there were many other cars similarly parked that evening. If the ticket was appropriate, the RTM Member said it would be paid, or, if inappropriate, submitted through the normal appeal process. Apparently, there was a further conversation about the matter sometime thereafter. By the time the chairs were delivered, however, the RTM Member stated that the notice of violation had been forgotten about and was not discussed.

As to the chairs, the RTM Member said that it was a hobby to fix up old furniture, and these had been found at the dump. They only required light restoration, involving a modest amount of gluing and refinishing and had been offered to several people, but they had all had turned them down. So by the time they were delivered to the Director's office, the RTM Member was anxious to get rid of them and saw little value in them except for their functionality in providing additional seating options for the office.

Interview with Director. Although there were some differences in recollection, the Director confirmed in an interview the essential elements of the RTM Member's account of the matter, such as the fact that the ticket had been surrendered within 15 days and that there was at least one follow-up conversation about the matter. The Director recalled telling the RTM Member that if the ticket was inappropriate both the fine and any penalties would be voided even if the determination was made after the penalties had been accumulated.

The Director indicated that the Town employees are encouraged to be "consumer-friendly". In the Department, this has led to a series of policies and "unwritten rules" that apply both to the enforcement of parking regulations and to the processing of contested tickets, which were in place when the Director was hired. As an example of a consumer-friendly policy, the Director maintains an "open door" policy, where any member of the general public, merchants and visitors can drop in to complain about parking tickets or policy or any other parking related policy if the Director is not otherwise occupied.

One of the unwritten rules of the Department is to be more lenient in enforcing parking tickets when there is a surge in parking demand because of Town events held at times that are not during normal business hours. Therefore, the Director investigated the matter of the RTM member's ticket by calling the Parks and Recreation Department to confirm that there had been event an event in Roger Sherman Park that evening. The Director's investigation did not include contacting the Police Department, however, even though the reason given for discharging the fine and penalties was "Officer Error".

According to the Director, members of the Police Department are not as well suited for giving parking tickets as the enforcement officers employed by the Parking Services Department because the Police Department does not have the specialized equipment that records images to assist in verifying the accuracy of challenges. In addition, there seems to be an appreciation in both the Parking Services Department and the Police Department that the time needed to be spent to defend a parking ticket in person is both disruptive of patrol schedules and not a productive or efficient use of police officers who are highly trained in other areas more vital to the safety and security of the Town. Accordingly, the Director reported that it is both quite uncommon for police officers to write parking tickets and quite common for tickets written by police officers to be voided by staff of the Department. Another of the unwritten rules of the Department appears to be that tickets written by police officers are less reliable than those written by parking enforcement officers due to the lack of photographic evidence⁵.

The Director indicated that there is normally no communication between the Department and the police concerning the disposition of tickets written by police officers. In the case of the RTM Member's notice of violation, this was confirmed by the Chief of Police and the officer writing the ticket. According to the Director, neither parking enforcement officers nor police officers are evaluated for their performance relative to tickets discharged for officer error. The Director indicated that this is in part due to the fact that the code for officer error is used by default for a wide variety of circumstances where there is no other code that accurately describes the reason for the discharge.

In the view of the Director, the RTM Member was treated no differently than any other member of the general public in being able to approach the Director directly and request that the matter be looked into. When the Director saw that the ticket was issued after the normal time for tickets to be issued by Departmental employees and was written by a police officer at a time when it was later confirmed that a Town event was taking place at a nearby park, the Director believed that

⁵ The Town's Parking Enforcement Officers have a sophisticated ticketing system that allows for photographs that support and substantiate any disputes or questions of the validity of the violations. The Department, whether through a hearing or in the office, has voided a high number of handwritten tickets in comparison to electronic tickets due to lack of evidence (photographs).

there was ample justification for voiding the notice of violation. The fact that the reason given was “Officer Error” was due to the lack of space the parking violations management system software allows for recording broader explanations.

According to the complaint, the RTM Member delivered the chairs around the 6th of September, while the parking violations system records the fines and penalties as being discharged on September 14th. The Director seemed genuinely uncertain, however, as to whether the chairs were received before or after the discharge occurred. What did seem clear from the interview is that the Director’s determination that the discharge was appropriate was made prior to the time that the chairs were delivered even if the discharge was entered into the system sometime later.

What is unclear to the Board is the authority for the Director to discharge fines and penalties in the first instance. Except to the extent that it may fall under the general authority to supervise collections in Section 122 of the Greenwich Municipal Code, the only direct authority for discharge that the Board has found is in Section 34-14 (c), which reads in pertinent part as follows:

Any person wishing a hearing to contest the validity of such notice may appear in person within 15 days of the issuance of such notice at the Parking Violations Office of the Police Department and shall be given at that time a hearing date before a parking violations hearing officer appointed by the First Selectmen[sic]... Said officer shall announce his decision of the validity or invalidity of the notice at the end of the hearing directly to the contesting person and shall certify said decision on the same day to the Parking Violations Office of the Police Department.

In the absence of an appearance on the appropriate hearing date, Section 34-14 (c) provides that a notice of violation is presumed to be valid. This suggests that contests are expected to be made only in the manner described in Section 34-14 (c). However, the Director indicated that the authority to discharge fines and penalties is in the job description of the Director.

The procedure for contesting parking tickets described on the Department of Parking Services pages on the Town website seems to follow the procedure outlined in Section 34-34 (c). But it dispenses with the requirement that the individual contesting a notice of violation appear at the Police Department. Instead, a person who wishes to contest a ticket is directed to the site of the Town’s on-line collections vendor, who offers (but does not guarantee) to forward a request for a hearing to the Department. There is no indication that contests can be submitted in person to an employee of the Department without applying for a hearing, nor is there any information about what the grounds are typically considered an appropriate basis for requesting the voiding of a notice or discharging or modifying fines or penalties.

When interviewed by the Board, the Director stated that the practice of having all contests resolved by a formal hearing had been abandoned years ago, as the number of contests became too numerous to handle cost efficiently, even with the use of volunteer hearing officers. This situation may have resulted in part from the high number of contests that Greenwich experiences relative to surrounding municipalities. The Director indicated that, even with most of the contests being handled directly by staff within the Department and the use of ticket issuing devices that can capture images of the illegally parked vehicles, the discharge rate for notices in Greenwich is well above 35%, while the average for surrounding communities is well below 10%.

When questioned about provisions of the Code, the Director expressed some vagueness and uncertainty, apparently believing that the Code contained a \$100 exemption for gifts and unaware that the Town's Human Resource Policy Manual limits gifts to Town employees from a single source to \$25 per annum. In fact, the Code contains no dollar limit under which gifts are acceptable. While the Board has indicated that it will defer to Town's assessment that \$25 per year is not likely to influence an employee's performance, it has also made it clear that compliance with the Code is measured, not by a dollar limit, but by the totality of the circumstances.

The Board also questioned the Director about training in the area of ethical concerns and learned that the Director had received no particular training with respect to the Code of Ethics, either upon hiring or as a part of periodic ethics training, and had not been given a copy of the Code or any information concerning the Board's Advisory Opinions. The Director also was not required to provide training to other members of the Department about the Code of Ethics or the Town's Standards of Conduct.

An internal audit by the Town, conducted prior to the Director's employment in 2014, identified issues with the Department's procedures and internal controls, which the Director indicated have also contributed to the high voiding rate and other problems. The Director stated that a concerted effort has been made to address these issues, including the need to put pressure on the Department's employees to change poor practices that they had become comfortable with over the years. Accordingly, the last few years have been stressful for the Department. The Board has been advised that further audits have been performed and additional controls and procedures are being implemented. The Board has little doubt that these will address many of the concerns that the Board has identified in the course of its preliminary investigation.

FINDINGS

The Board has carefully reviewed and investigated the complaint with the full cooperation of the Director. As a result of its investigation, the Board has developed the above statement of facts and a made determination of the existence of probable cause, which the Director does not disagree with. Based on its factual

determinations, the Board has made findings and recommendations. Since the Director has agreed to its statement of facts based on the preliminary investigation and consented to its recommendations⁶ as set forth below, the Board has determined that no further investigation of the complaint is necessary.

Because of the forthright manner in which the Director cooperated in the Board's investigation of the complaint and in the absence of any evidence to the contrary, the Board accepts the Director's assertion that the RTM Member's fine and penalties were discharged in accordance with longstanding practices of the Department and for reasons that appeared to be sufficient at the time, even though they may not appear to be particularly compelling to the Board in hindsight. Therefore, we do not find that the chairs that the RTM Member donated for use and disposition in the Director's office were likely to have influenced the Director's decision to discharge the RTM Member's fine and penalties. This would be necessary in order for us to find the Director in violation of the Code.

By accepting the Director's explanation that the chairs were not influential in the decision to discharge the RTM Member's fines and penalties, the Board is not, however, accepting the curious logic by which the Director considers the RTM Member to have been treated in the same manner as any member of the general public. This would only apply if qualified by the addition of "who complains." In fact, there were five other members of the general public who were not treated the same as the RTM Member, apparently unaware of the unwritten rules of the Department that discourage enforcement of parking policy during Town events and consider tickets written by police officers inherently unreliable.

Armed with knowledge of the unwritten rules and an awareness of the Director's open door policy, each of the other five persons receiving tickets at the lot that night presumably would have paid the Director a visit and been entitled to have their fines and penalties discharged. Not only would this encourage them to illegally block access and entry to parking lots in future, it would encourage others to approach the Director for similar relief. This can only further create the appearance of favoritism, since it will not take long before the Director is forced to turn some applicants away in order to have time left to administer the Department, leaving them to wonder why others were granted access to the "open door."

The Board is constrained to say that the longstanding practices of the Department under which the RTM Member's fine and penalties were discharged seem to have developed in an environment that is somewhat insensitive to the ethical concern about favoritism that is reflected in the Code. In this respect, the Director may have lost an opportunity to lead by example. Town employees frequently find themselves in situations where it is necessary to decline a small gift

⁶ The Board recognizes that the Director's consent to the recommendations of the Board is limited to acting within the confines of the Town and the Town may in fact disagree with such recommendations.

or favor in order to comply with the Code, perhaps at the risk of offending an individual who is sincerely appreciative of their work. Similarly, they must refuse to grant favorable treatment to family and friends and other persons who are in a position to express their appreciation in a tangible way. Sensitivity to this concern by supervisors helps to instill the ethic that maintains the reputation of the Town for integrity at all levels.

Since there is no one responsible for routinely reviewing the performance of the Director in discharging fines and penalties, the mere act of seeking a supervisory level review of a notice of violation suggests a desire for favorable treatment. While we believe that an open-door policy by the Director with regard to the general public is a positive aspect of the Town's effort to be "consumer friendly", we don't believe that it should include independent action by the Director to discharge or modify fines or penalties for violations of the Town's parking regulations. The Director has conceded that better procedure would be for the Director to refer persons justified in contesting a notice of violation to an appropriate hearing officer or staff member, with an invitation to advise the Director if the disposition is unsatisfactory, so that the Director could then review the independent disposition. This is more consistent with the supervisory nature of the Director's position. It should only improve the ability of the Director to provide good customer service to the public by relieving the Director of the considerable groundwork necessary to properly investigate and resolve contested notices of violations. It also avoids the natural assumption, by outside or even inside observers, that those whose matters are being handled by the Director personally are receiving preferential treatment, as compared to those whose matters are being treated by lower level staff or volunteers.

The Board is also constrained to say that it does not accept the Director's explanation that the acceptance of the chairs was only an acceptance of a gift on behalf of the Town. Just as the Director should not, as a supervisor, discharge violations in the first instance, the Director should not consider that accepting property on behalf of the Town is a matter that can be done *sua sponte*, without the involvement of the Town officials responsible for keeping track of and maintaining such property. Just as the ability to leapfrog to the attention of a departmental supervisor suggests preferential treatment in the handling of a violation, the fact that no other department of the Town needed to be involved in the acceptance of the chairs should have suggested to both the Director and the RTM Member that the chairs were a personal gift to the Director, to be used of and disposed of at personal whim. The fact that the Director disposed of the chairs after the Director received notice of the complaint, without the need to consult other Town employees, further reinforces this conclusion.

The Board also does not agree with the Director's assertion that other gifts, such as food and flowers, that are received by Town employees from vendors for use or consumption in the workplace, should be considered exempt from consideration under the Code. A gift of flowers received by a supervisor in the

workplace is no less personal if received from a Town vendor than it is if received from a spouse or other friend or admirer. There are obviously circumstances in which food or other supplies are a necessary part of a vendor's services and others in which a gift, such as a box of cookies, would obviously not approach the \$25 annual gift allowance if the value is allocated on a per person basis within the department it is given to. But the Board would not like to think that such practices are taken lightly. There should be no general understanding on the part of Town employees that any gift of property received in the workplace is made to the Town and is therefore exempt from the Town's usual ethical standards and requirements. All such gifts should be subject to strict scrutiny for adherence to the Code and any Town vendor offering inappropriate gifts should be reported to the proper authorities for possible violation of contractual obligations.

Although the RTM Member recollected asking the Director if the chairs would be a welcome gift before bringing them into the office, the Board finds more convincing the Director's expression of being nonplussed when the RTM Member arrived with the chairs unannounced. We had the impression that the Director might have accepted the chairs out of an understandable desire on the part of an embattled Town supervisor not to offend another Town Officer. But it would have been more appropriate if the Director had demonstrated better judgment at the time and rejected the offer of the chairs with the stated goal of avoiding any appearance of impropriety. By failing to reject the chairs, the Director missed a chance to set a good example for the employees of the Department and provided an opportunity for just the kind of criticism articulated in the complaint.

It is not the Board's responsibility to make recommendations about how the Parking Services Department should be managed. It is the role of the Board, however, to advise Town Officers about how best to avoid the appearance of favoritism, cronyism and other conflicts that may be perceived as violations of the Code. In this respect we must comment on an apparently longstanding failure by the Department to adopt standards and controls that would help prevent actual or perceived violations of the Code from occurring. An environment where an informal system of handling contested notices of violations exists side-by-side with a formal authorized structure creates an appearance of favoritism that is only magnified when the informal determinations are made according to unwritten rules.

The Board verified that the Director is only responsible for a tiny fraction of the notices of violation that are discharged or voided in a given year. This background attenuates the credibility of the complaint. But the complaint seems to have been made by a person or persons who appreciated that any instance in which the Director voids a ticket personally can look suspicious when the person to whom the ticket has been issued is another Town Officer. This is even more likely when the Town Officer is a member of the RTM who has been involved in recent discussions of parking policy with the Director. Even if the vote of a member of the Representative Town Meeting is only one of many, it must be kept in mind that the Representative Town Meeting is a deliberative body where a single voice can be

persuasive in shaping the outcome on any matter and that the Representative Town Meeting's responsibilities on behalf of the citizens of the Town are very broad.

We have been apprised of the hard work and dedication that the Director has exhibited in trying to implement proper standards and controls within the Department, but there is apparently more work to be done. The Director indicated that the Department's software system frequently does not provide accurate details of the reasons for discharging fines and penalties to be recorded and conceded that incorrect or incomplete communications can be mailed out by the systems' vendor without any review. Presumably this is because there is no customized set of codes that correspond to the actual operations of the Department. It has also apparently been difficult to replace the name of a long-retired supervisor or make other appropriate changes on the forms by which the Department communicates with the public. If there are limitations on the system that prevent these issues from being corrected, the system should be modified or replaced.

We appreciate the Director's attempt to respond to the complaint as constructively as possible. The Director cooperated with the Board in its preliminary investigation, addressed the allegations substantively, conceded the possibility of errors in judgment and considered alternative ways in which the matter could have been handled. We have been assured that no efforts have or will be made to identify or to retaliate against the person or persons who may have been responsible for the complaint being filed.

RECOMMENDATIONS

The Board recognizes that the Director has been working with the 1st Selectman and the Department of Internal Audit to improve the internal controls and strengthen the procedures of the Department. In that process, many of the issues identified in this decision have been or are in the process of being addressed. In particular, we have been advised that the Department has already taken steps to implement the recommendations made in paragraphs 2, 5, 7 and 8 below based on the findings and recommendations of the 2016 internal audit of the Department.

A necessary focus of these efforts has been to enable the Department to operate more efficiently and maintain a high degree of integrity in the revenue collection process while the focus of the Board's recommendations have been the adoption of procedures and controls that ensure compliance with the Code of Ethics. Therefore, even though they may overlap with the initiatives already underway, the Board feels it is appropriate to place its own recommendations on the record, since they may provide guidance for other Town Departments with respect to their efforts to ensure compliance with the Code .

Accordingly, the Board makes the following recommendations to the Selectmen and the RTM:

1. With the concurrence of the 1st Selectman, steps should be taken to ensure that the job description of the Director is changed to indicate that the Director's role in voiding, discharging or otherwise adjusting fines for violations is strictly to supervise the hearing officers and employees authorized to take such actions and to correct mistakes when made, with appropriate records kept of the reasons for such corrections.

2. A determination should be made as to whether employees of the Parking Department are or should be authorized to discharge fines and penalties and whether the process for contesting notices of violations should be set forth in the Town Municipal Code or left to the discretion of the Department. The existence of an appeal process other than the one provided for in the Town Municipal Code or described on the Town website increases the possibility that there may be an appearance of favoritism in connection with fines or penalties discharged in a more informal way.

3. The Director should receive training in the application of the Code and the Town's Principles of Behavior and Standard of Conduct, which should include consideration of specific situations in which these might apply to the Department of Parking Services as well instruction on how to integrate these ethical standards into the ongoing training of the Department's employees. Consideration should be given as to whether additional training of this type would be useful for other supervisory employees of the Town.

4. All employees of the Department should receive additional training with respect to their obligations under the Code and the ethics provisions of the Human Resource Policy Manual. Consideration should be given as to whether all Town employees should receive additional ethics training with respect to the receipt of gifts in the workplace.

5. The Department should adopt a uniform procedure for qualifying persons to act as Hearing Officers with authority to discharge fines or penalties associated with notices of violations. This should include a review of qualifications, a written recommendation by the Director and approval by the First Selectman, and a fixed term of office.

6. All Hearing Officers should be subject to periodic performance reviews. Any consideration of reappointment should include evaluation of the performance reviews approved by the Office of the First Selectman.

7. The Department should evaluate its practices for adjudicating violations and ensure that a single set of detailed guidelines is available for use by all Hearing Officers that properly reflects all such practices. These guidelines should be evaluated and revised periodically to conform to changes in the Department's operations.

8. The Department should adopt written procedures for voiding notices of violations or discharging or modifying fines and penalties and publish a description of these procedures on the Town website. These procedures should include the criteria applied to determine if a contest should be upheld. These should be consistent with the Greenwich Municipal Code, as it may be revised.

9. Methods should be evaluated for establishing lines of communication with the Police Department that allow for a productive exchange of relevant information without unduly burdening operations. No notice of violation should be voided or discharged for officer error without notifying the officer involved and appropriate supervisory personnel.

10. The Director, with the assistance of the Department of Law, should make recommendations to the Selectmen and the RTM to make sure that the practices of the Department are consistent with the Municipal Code, so that: (a) the authority for Departmental employees to discharge violations is clarified, (b) the procedures currently in use to contest tickets are more clearly authorized and the circumstances under which employees and hearing officers have discretion to discharge violations are more clearly defined and (c) records of the disposition of contested violations are required to be maintained sufficient to permit reviewing authorities to ascertain the reasons for any discharge or modification of penalties in any particular case.

11. With the assistance of the Department of Human Resources, the Director should re-examine the Code, the material in the Human Resources Policy Manual of the Town of Greenwich and the ethics materials posted by the Board on the Town website in order to: (a) understand better personally the application of the Code and other Town ethics policies to the operations of the Department, (b) develop materials to integrate ethics training into the training programs for Departmental employees and (c) make recommendations to the Board of Ethics and the Department of Human Resources, based on personal experience, as to how the Policy Manual, web based resources and training programs for Town employees generally can be improved so as to ensure a high level of ethical conduct by Town employees at all levels.

Decision No. 17-02

Date: 5/25/2017

Topics: Elected Officials, Exerting Influence, Fines, Gifts, Representative Town Meeting, RTM Member, Substantial Financial Interest

Code Sections: Section 4

On September 19th, 2016, from an email address identifying itself as “greenwichresident”, the Board of Ethics received a message stating that the sender was making a “formal complaint.” It was alleged in the message that a “valuable gift” had been given by a member of the Representative Town Meeting (the “RTM Member”) to the Director of the Department of Parking Services (the “Director”). The message alleged that the gift was given “for voiding one or more parking tickets”, gave the approximate dates that the parking ticket was given to the Director and the gift was received, and identified the gift as a set of chairs. The message also attached images, which were apparently taken by the Department’s security cameras or by a departmental employee, of the RTM Member carrying an antique chair into the Director’s office and of what appeared to be a similar chair in the office.

Consideration of the message as a possible complaint was within the jurisdiction of the Board because it concerned actions of Town Officers and alleged that a valuable gift (the chairs) had been received in exchange for a Town action (voiding of a parking ticket). Accordingly, the Board reviewed the message carefully and found that the facts alleged, taken at face value, contained all the elements of a violation of the Greenwich Code of Ethics (the “Code”). It was therefore determined to be a complaint as to the Director. Due to the nature of the alleged exchange, however, it was incumbent on the Board to consider whether the message also alleged facts that indicated a violation of the Code by the RTM Member.

REQUIREMENTS OF THE CODE

The Code contains two sections that might apply to the allegations made about the RTM Member in the complaint. The first is Section 3, which states:

No town officer or his immediate family shall accept any valuable gift, thing, favor, loan or promise that might tend to influence the performance or nonperformance of his official duties.

Since the voiding of a parking ticket would relieve the RTM Member of a financial obligation it can clearly be seen as a valuable favor. The complaint does not allege a specific action taken by the RTM Member in exchange for the favor. However, the Code only requires that what is received *might tend to influence* the performance or nonperformance of official duties. Since the Representative Town Meeting has broad legislative powers with respect to Town government, it is likely that a member of the Representative Town Meeting might be called upon to discuss and/or vote on budget or other matters pertinent to the Department of Parking Services and the receipt of a favor could influence the RTM Member in those discussions or votes.

Section 4 of the Code also prohibits Town Officers from exercising improper influence on Town actions:

No town officer having a substantial financial interest in any transaction with the town or in any action to be taken by the town shall use his office to exert his influence or to vote on such transaction or action.

Because the complaint did not allege that the RTM Member had attempted to exert influence, but had rather exchanged a set of chairs for the voiding of the ticket, the Board had no occasion to view the complaint as alleging a violation of Section 4 of the Code. However, as discussed below, the information received by the Board in its preliminary investigation of the complaint raised a question as to whether there was such a violation.

While it must allege each of the elements of a violation of the Code, several additional criteria must be met in order for a submission to the Board to be considered a complaint under the Code of Ethics. In its Statement of Procedures and Rules of Conduct, the Board has articulated these criteria. A vague general accusation that a Town Officer has violated the Code is not sufficient. A complaint is required to contain enough detail to allow the Board to determine the specific Town actions or transactions involved and enough information about the circumstances for the Board to be able to conduct a productive inquiry into the matter. In the case of an anonymous submission, this requirement of specificity is particularly relevant since the Board has no ability to contact the complainant to supply additional information. In addition, the Board also considers the appropriateness of conducting an investigation into the matters alleged to ensure that the human and financial costs of conducting the investigation do not significantly outweigh the benefits obtained by the Town.

After careful consideration of all these factors, the Board determined that the submission satisfied the requirements of the Code for a complaint against the RTM Member. Accordingly, the Board was required to commence a confidential preliminary investigation to determine if there was probable cause to believe that a

full investigation of the matter would result in a finding that a violation of the Code had in fact occurred.¹

Although the Board conducted its preliminary investigation and interviewed the respondents as a part of the same proceeding, the Board ultimately decided to consider the case of each respondent separately and to render separate decisions with respect to each.

STATEMENT OF FACTS

During its preliminary investigation, the Board was successful in establishing a number of pertinent facts relative to the allegations in the complaint. Because the complaint was anonymous, care was taken to protect the confidentiality of the respondents and to expand the scope of the investigation only by measured steps as justified by the production of credible and verifiable evidence.

Review of Parking System and Police Records. To begin the preliminary investigation, the Board first obtained reports from the Town's parking violations system database. These indicated that the RTM Member had in fact received a ticket on the evening of August 3rd, 2016. The ticket was manually issued by a police officer for parking in an illegal space at the Island Beach parking lot at 8:40 PM. System records further indicated that the fine was \$55, that penalties had accumulated in the amount of \$110, and that the entire \$165 had been "conditionally discharged" by the Director for "officer error" on September 14th.

A dispatch report for August 3rd indicated that the police received a call about a van that was being blocked from leaving the Island Beach parking lot and had dispatched a patrol car at about 8:30 P.M. The officer responding to the call issued six notices of violations to illegally parked cars, one of which was to the RTM Member. Later review showed that a fine had been paid in every instance except the violation issued to the RTM Member and also showed no record of any prior parking violations by the RTM Member in the database.

The parking violations database also recorded that a notice had been mailed to the RTM Member on September 14th. The notice was under the name of the Director's predecessor. Moreover, the copy that the Board received did not contain any indication of the disposition of the ticket or explanation of the reason for the notice to be sent. The RTM Member didn't recall receiving the notice.

¹Subsequent to the Board's determination that the allegations in the email message should be considered a complaint, the Director engaged the law firm that employs the niece of Mr. Robert Sisca, who is a member of the Board. As a result, Mr. Sisca withdrew from participation in the preliminary investigation of the complaint did not participate in the drafting, discussion, consideration or approval of this decision.

Interview with RTM Member. During an interview with the Board, the RTM Member stated that the notice of violation had been brought to the attention of the Parking Director only to question whether it was consistent with Town policy, because there were many other cars similarly parked that evening. If the ticket were appropriate, the RTM Member indicated that it would be paid, or, if inappropriate, submitted through the normal appeal process. Apparently, there was a further conversation about the matter sometime thereafter. But the RTM Member stated that by the time the chairs were delivered, slightly more than a month after the ticket was issued, the matter had been forgotten about and was not discussed. The notice from the Board of an ethics complaint was the first time the RTM Member became aware that the violation had been discharged.

Since the RTM Member was apparently comfortable using the normal appeal process, the Board inquired into the reason for going to the Director personally to ask that the ticket be looked into. The RTM Member indicated that it was simply a matter of convenience. Serving for many years on the RTM and various regular and special committees, the RTM Member had developed relationships with many of the Town's important appointed officials and key employees. When the Director first became involved in Town government, the RTM Member considered it important to be "welcoming" and to drop in from time to time to ask how things were going and if there was anything the RTM Member could do to be helpful.

The RTM Member indicated that the opportunity to be involved in numerous Town matters and to develop relationships with various Town decision makers was part of the RTM Member's activities as a member of the Representative Town Meeting. While not considering the relationship with Director particularly strong, the RTM Member had had several meetings during the early summer concerning parking at the Cos Cob Library and other issues of concern to the RTM Member's constituents. Aware of the Director's open door policy and apparently understanding the Town's accommodating stance toward parking violations at town events and tickets written by police officers, the RTM Member felt confident that no special treatment had been sought or received in requesting the Director to look into the matter and having the ticket discharged.

As to the chairs, the RTM Member said that it was a hobby to fix up old furniture, and these had been found at the dump. They only required light restoration, involving a modest amount of gluing and refinishing and had been offered to several people, but they had all had turned them down. By the time they were delivered to the Director's office, the RTM Member was anxious to get rid of them and saw little value in them except for their functionality in providing additional seating options for the office.

The Board verified that the ticket given to the RTM Member appears to be the only parking ticket received in over twenty years. This shows that the RTM Member does not make a practice of parking illegally and asking the Department to

void any tickets received. It places the allegations made in the complaint in a better context, but it does not make them irrelevant.

When questioned by the Board, the RTM Member showed a general appreciation of the provisions of the Code of Ethics and particularly mentioned the distinction between interests that an RTM Member would share with other Town residents and interests of a purely personal nature. The RTM Member indicated that there was no special training or information provided to members of the RTM about ethics compliance other than to receive the annual reminder letter from the Board regarding the filing of a disclosure form required by the Code.

Interview with Director. Although there were some differences in recollection, the Director later confirmed the essential elements of the RTM Member's account of the matter, such as the fact that the ticket had been surrendered within 15 days and that there was at least one follow-up conversation about the matter. The Director recalled telling the RTM Member that if the ticket was inappropriate both the fines and any penalties would be voided even though processing the voiding of the ticket might occur after penalties had accumulated.

The Director indicated that the Town employees were trained to be "consumer friendly". In the Department, this has led to a series of policies and "unwritten rules" that apply both to the enforcement of parking regulations and to the processing of contested tickets. As an example of a consumer-friendly policy, the Director maintains an "open-door" policy, where any member of the general public can drop in to complain about parking tickets or policy if the Director is not otherwise occupied. This open-door policy was cited by the Director as the reason that the RTM Member had first established a relationship with the Director (to discuss parking issues concerning the Cos Cob Library) and that the Director later considered it appropriate to deal with the issue of the RTM Member's parking ticket directly.

The Director confirmed that one of the unwritten rules of the Department is to be more lenient in enforcing parking tickets when there is a surge in parking demand because of Town events. Therefore, the Director investigated the matter the RTM Member raised by calling the Parks and Recreation Department to confirm that there had been event an event in Roger Sherman Park that evening. The Director's investigation did not include contacting the Police Department, however, even though the reason given for discharging the fine and penalties was "Officer Error".

In the view of the Director, the RTM Member was treated no differently than any other member of the general public in being able to approach the Director directly and request that the matter be looked into. When the Director saw that the ticket was issued after the normal time for tickets to be issued by Departmental employees and was written by a police officer at a time when it was later confirmed that a Town event was taking place at a nearby park, the Director believed that there was ample justification for voiding the notice of violation. The fact that the

reason given was “Officer Error” is apparently due to the limited number of codes available for entry and the lack of space allowed by the parking violations management system software for recording broader explanations.

The complaint alleges that the RTM Member delivered the chairs around the 6th of September, while the parking violations system records show that the fines and penalties were discharged on September 14th. The Director seemed genuinely uncertain, however, as to whether the chairs were received before or after the discharge occurred. At the same time, the Director was emphatic that the determination that the discharge was appropriate had been made quickly and prior to the time that the chairs were delivered, even if entered into the system afterwards.

When asked why the RTM Member shouldn’t have been referred to the appeal process described on the Parking Services Department’s website, the Director indicated that the practice of having all contests resolved by a formal hearing had been abandoned years ago, as the number of contests became too numerous to handle cost efficiently, even with the use of volunteer hearing officers.

FINDINGS

The Board has carefully reviewed and investigated the allegations in the complaint as they relate to the RTM Member and has appreciated the willingness of the RTM Member to cooperate in the Board’s investigation. As a result of its investigation, the Board has developed the above statement of facts and a made determination of probable cause, which the RTM Member does not disagree with. Based on its factual determinations, the Board has made findings and recommendations. Since the RTM Member has agreed to the facts established during the preliminary investigation and consented to its recommendations as set forth below, the Board has determined that no further investigation of the complaint is necessary.

Because of the forthright manner in which the RTM Member and the Director cooperated in the Board’s investigation of the complaint and in the absence of any evidence to the contrary, the Board accepts the Director’s assertion that the RTM Member’s fine and penalties were discharged in accordance with longstanding practices of the Department and for reasons that appeared to be unremarkable at the time, even though they do not appear to be particularly compelling to the Board in hindsight. We also accept that the RTM Member was familiar with these practices. Therefore, we do not find that the Director’s decision to discharge the RTM Member’s fine and penalties to have been a valuable favor to the RTM Member, which would be necessary in order for us to find a violation of Section 3 the Code.

At the same time, the concerted efforts of the RTM Member to use the position of being an RTM Member to gain an influential role in Town government cannot be overlooked. Indeed, in almost every other context they are laudable.

There is no doubt but that, by being active on RTM Committees and building relationships with other Town leaders, the RTM Member has become better informed about the matters that the Representative Town Meeting is responsible for, more effective at representing the needs of constituents and a more authoritative voice in Town government.

With authority, however, comes responsibility. Here, the relationship between the Director and the RTM Member was established on the basis of the RTM Member's special status to advocate on behalf of constituents and seek answers about how Town government operates. There is no question but that Section 4 of the Code prohibits Town Officers from using their office to influence actions in which they have a personal financial interest. With respect to a matter being dealt with by any Town department, in which a Town Officer has a direct financial interest, it should clearly be inappropriate for the Town Officer to approach any supervisory employee of the department.

The RTM Member has argued that, since the Representative Town Meeting has so many members, the influence of a single member is so negligible as to be non-existent. We appreciate that it must feel this way at times. But to accept this argument would be to do a disservice to the extensive and well-recognized efforts that the RTM Member has made to be involved in Town affairs at every level. The only good reason for this is to be a better member of the Representative Town Meeting.

The fact that the result of the Town action would have been the same had the RTM Member's ticket been handled by a non-supervisory employee is immaterial as it relates to Section 4. The prohibition applies to behavior before the action is taken and is against the appearance of influence. Accordingly, the violation occurs regardless of the outcome. Here the impact of the RTM Member's position as a Town Officer may have been relatively small, but the infraction is real nonetheless.

In view of the foregoing, the Board determined that the RTM Member has violated Section 4 of the Code.

RECOMMENDATIONS

Because it appears that the parking ticket issued to the RTM Member would have been voided if a protest had been requested from a Hearing Officer, the Board recognizes that the RTM Member has gained very little of significant monetary value as a result of the action taken by the Director. The Board is also satisfied that this infraction may be attributable to a lapse of attentiveness to the application of the Code in this particular instance, rather than to a casual disregard for the requirements of the Code in general.

This apparently inadvertent infraction has clearly caused the RTM Member great distress. The Board notes that the RTM Member has written a letter disclosing

this situation to the Moderator of the Representative Town Meeting and the Selectmen, which takes responsibility and makes constructive recommendations based on this personal experience. The Board is also pleased that the RTM Member has pledged to support amendments to the Municipal Code to clarify the procedures used by the Department in processing notices of violations and to support improvements in the internal controls of the Department in general.

Accordingly, the Board will forward a copy of this decision to the Moderator of the Representative Town Meeting and the Selectmen and recommends that the Moderator forward a copy to each member of the Representative Town Meeting and consider taking steps to improve the awareness of all members with regard to the standard of conduct required of them under the Code.